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John E. Rogers

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THE PROSPECTS FOR MODERNIZATION OF FINANCING OF MEXICAN BUSINESS

JOHN E. ROGERS, ESQ.*

In the United States, under the Federal Fair Credit Reporting Act, a United States citizen is entitled, if he or she is denied credit and that denial of credit is based on a credit report, to obtain a copy of the report to determine what information was used to make that decision. In Mexico, virtually the entire private sector has been denied credit for over ten years. In the course of this program, the hope is that we will be able to find, in a sense, a copy of the credit report on the Mexican private sector. If we find it, we want to identify any errors in the report. It has been my experience that credit reports do not always have entirely accurate information.

Access to credit is just as important to Mexican companies as to United States companies, particularly small and medium-sized companies. In order for these companies on both sides of the border to become internationally competitive, it is important that they have full access to credit. In the case of the Mexican private sector, access to credit has been very limited in the last few years, mainly because of two pivotal events that occurred in August and September of 1982. In August, the Mexican government announced that it would not be able to continue servicing its external debt obligations in accordance with their terms. On September 1, 1992, former President Lopez Portillo announced the nationalization, or government take-over, of the commercial banking industry in Mexico.

Since 1982, the Mexican government, through a series of debt negotiations and restructurings culminating with the Brady Bond negotiations that concluded between 1990 and 1991, has obtained a fair amount of control of its external debt problem. Early in 1992, the commercial banks completed their re-privatization so that the Mexican banks are in private hands once again. Nonetheless, the Mexican private sector continues to have problems with gaining access to credit. In the case of foreign banks that were lending to the Mexican private sector up until August of 1982, there does not appear to be much appetite for extending more credit. The foreign banks have become subject to reserve requirements and other restrictions that have made it very difficult for them to lend to either the public or the private sector in Mexico. In addition, credit committees in many banks have begun to scrutinize the creditworthiness of Mexican companies much more than they did in the past.

* Partner, Carlsmith Ball Wichman Murray Case & Ichiki, Mexico City; Author, *Using the Brady Bond Approach in Mexico; Corporate Financings*, MEXICO TRADE L. REP. 5 (April 1992). A.B., Harvard College; J.D., Columbia Law School; Master of International Affairs, Columbia University; admitted to New York bar, 1971.

On the Mexican bank side, it appears that the nationalization of the commercial banks led to a substantial redirection of a lot of their lending during the time of government control. During that period, most of the lending was going to the public sector instead of to the private sector. In addition, these banks were being run, basically, by government bureaucrats who probably did not have the same sensitivity to the needs of the private sector as their predecessors.

Presently, Mexico's economic and financial prospects have become much better under the de la Madrid and Salinas administrations. The economic growth rates are much higher, and inflation is much lower. Many of the peristaltic industries have been privatized or re-privatized, but the Mexican private sector continues to suffer under the equivalent of a credit crunch or credit denial. Of course, the largest companies, Vitro, CEMEX, and FEMSA, have had no discernible difficulty in obtaining financing from abroad. Most of the financing, however, has been through international securities offerings. Perhaps, one of the problems with the securities market is that it is somewhat more volatile than the bank lending market was in the past, and there have been situations in which access to the securities market has been interrupted for periods of time. For example, last year, when Ross Perot first warned of the "Great Sucking Sound" phenomenon that he expected, this apparent challenge to NAFTA's prospects led to a substantial interruption of access to that market by Mexican companies.

It is frequently necessary for small and medium-sized companies in the United States to turn to banks for asset-based lending, both on the personal and real property side. United States banks, however, in lending to Mexican borrowers, have been typically looking for assets located in the United States in the form of either cash collateral deposited with United States banks or real property located in the country. If either of these are unavailable, then the ability of a Mexican company to obtain credit is severely limited because of concerns by United States banks as to their ability to obtain enforceable security interests in Mexico.

This brings us to the subject of this review. Our panelists are going to explore the problems and pitfalls in creating and perfecting security interests in both personal and real property in Mexico. The panel will accomplish this in three steps. First, we will have a description of Article 9 of the Uniform Commercial Code in Spanish, as adopted by the States of the United States, to provide an introduction to how security interests in personal property are created and perfected in the United States. Professor Frederick M. Hart of the University of New Mexico School of Law will provide the brief overview of the Uniform Commercial Code (translated to Spanish). Next, a panel will discuss a hypothetical case involving the financing of personal property in Mexico. Finally, another panel will discuss a hypothetical case involving the financing of real property in Mexico.